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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

ON

**THE RIGHTS AND DUTIES OF JUDGES
AND ON THE JUDICIAL COUNCIL**

OF MONTENEGRO

DRAFT**LAW ON RIGHTS AND DUTIES OF JUDGES AND ON JUDICIAL COUNCIL****I BASIC PROVISIONS****Scope****Article 1**

This Law shall govern the manner of election and termination of the term of office of the Judicial Council members, organisation and manner of operation of the Judicial Council, procedure for election of judges and layjudges, manner of establishing termination of judicial office, disciplinary liability and dismissal of judges and layjudges and other matters on which the Judicial Council renders decisions.

Independence and Autonomy**Article 2**

The judge shall adjudicate and decide autonomously and independently.
Duties of judicial office shall not be discharged under anyone's influence.
No one shall influence the judge in the discharge of duties of his/her office.
The Judicial Council shall ensure independence, autonomy, accountability and professionalism of courts and judges in compliance with the Constitution and the law.

Judicial Council Members**Article 3**

The Judicial Council members shall be persons of high moral and professional qualities. In discharging their duties, Judicial Council members shall be independent and impartial. Gender balanced representation shall be taken into account in the course of proposing and electing Judicial Council members.

Public Nature of Operations**Article 4**

Operations of the Judicial Council shall be public, unless otherwise provided for by this Law.

Right to Association**Article 5**

Judges shall have the right to form professional associations.

Funds for Operations**Article 6**

Funds and conditions for operations of the Judicial Council and judges shall be provided in the budget of Montenegro.

Seat**Article 7**

The seat of the Judicial Council shall be in Podgorica.

II MANNER OF ELECTION AND TERMINATION OF OFFICE OF THE JUDICIAL COUNCIL MEMBERS

Judicial Conference

Article 8

Judicial Council members from among judges shall be elected and dismissed by the Judicial Conference by secret ballot.

The Judicial Conference shall be composed of all judges and presidents of courts.

The Judicial Conference shall adopt the Code of Judicial Ethics.

The Judicial Conference shall elect chairman of the Commission for Monitoring Compliance with the Code of Judicial Ethics (hereinafter referred to as: the Commission for the Code of Judicial Ethics).

Administrative-technical tasks required for operations of the Judicial Conference and Commission for the Code of Judicial Ethics shall be performed by the Secretariat of the Judicial Council.

Commission for the Code of Judicial Ethics

Article 9

The Commission for the Code of Judicial Ethics shall have a chairman and two members. Chairman shall be elected from among members of the Judicial Council who were not elected from among judges, one member shall be elected by extended session of the Supreme Court from among judges, while the other member shall be the president of the Association of Judges of Montenegro.

The Commission for the Code of Judicial Ethics shall be elected for a four-year term.

The Commission referred to in paragraph 1 of this Article shall submit its activity report to the Judicial Council once a year not later than 31 March of the current year for the previous year.

The Commission referred to in paragraph 1 of this Article shall adopt Rules of Procedure which govern in more detail the manner of operation and decision-making.

Decision-making in the Judicial Conference

Article 10

The Judicial Conference shall operate and render its decisions in sessions.

President of the Supreme Court of Montenegro shall convene Judicial Conference sessions and manage their operations.

Session of the Judicial Conference may be held if attended by at least two thirds of the total number of members, while decisions shall be rendered by majority of votes of the Judicial Conference members present in the session.

The Judicial Conference shall adopt its Rules of Procedure which govern in more detail the manner of operation and decision-making.

Judicial Council Members Elected from among Judges

Article 11

Judicial Council members elected from among judges shall be:

1) three members from among judges of the Supreme Court of Montenegro (hereinafter referred to as: the Supreme Court), Court of Appeals of Montenegro, Administrative Court of Montenegro, high courts, High Misdemeanour Court and Commercial Court with at least ten years of experience in holding judicial office;

2) one member from among judges of basic courts and misdemeanour courts with at least five years of experience in holding judicial office.

The judge who has been given the grade unsatisfactory or who has been imposed a disciplinary sanction may not be elected to the position of member of the Judicial Council from among judges.

Election Commission

Article 12

The procedure for compiling the list of candidates to be elected to the positions of Judicial Council members from among judges and procedure for election of Judicial Council members from among judges in the Judicial Conference shall be conducted by the Election Commission.

The Election Commission shall have chairman and two members elected from among judges by the extended session of the Supreme Court upon proposal put forward in sessions of the judges of all the courts.

The Election Commission shall be elected for a period of four years at least three months before expiry of the term of office of the Judicial Council.

Proposal for Election of Judicial Council Members from among Judges

Article 13

The proposal for candidates to be elected to the positions of Judicial Council members referred to in Article 11 paragraph 1 sub-paragraph 1 of this Law shall be established:

1) in a special session of judges of the Supreme Court in which two candidates from that court are proposed;

2) in special sessions of judges of the Court of Appeals of Montenegro, Administrative Court of Montenegro, Commercial Court, high courts and High Misdemeanour Court in which one of the candidates from each of these courts shall be proposed;

On the basis of notification on the proposed candidates, the Election Commission shall compile the list of eight candidates referred to in paragraph 1 of this Article in alphabetical order.

In order to establish proposal for candidates to be elected to the positions of Judicial Council members referred to in Article 11 paragraph 1 sub-paragraph 2 of this Law, the Election Commission shall obtain, in a manner that will ensure secrecy, initial proposals from each president and each judge of the misdemeanour court and basic court which shall contain proposal for two candidates.

The list of four candidates with the largest number of initial proposals referred to in paragraph 3 of this Article shall be compiled by the Election Commission in alphabetical order.

If, after obtaining the initial proposals referred to in paragraph 3 of this Article, there are more than four candidates with the same number of initial proposals, the Election Commission shall compile the list of all candidates with the largest or same number of initial proposals.

The form of the initial proposal referred to in paragraph 3 of this Article shall be set out by the Rules of Procedure of the Judicial Council.

Election of the Judicial Council Member from among Judges

Article 14

Lists of candidates for election of Judicial Council members established in accordance with Article 13 paragraphs 1, 2 and 4 of this Law shall be submitted to all the courts to be posted on the notice board of the courts at the latest two months before expiry of the term of office of Judicial Council members.

President of the Supreme Court shall convene the Judicial Conference at the latest 30 days before expiry of the term of office of Judicial Council members.

Judicial Council members from among judges shall be elected from the list of candidates referred to in paragraph 1 of this Article in the Judicial Conference on condition that one court can have only one candidate elected.

If no candidate from the list receives the required majority of votes, the voting shall be repeated for the five candidates from the list referred to in Article 13 paragraph 2 of this Law, and for the two candidates from the list referred to in Article 13 paragraph 4 and paragraph 5 of this Law who received the largest number of votes.

If there are several candidates with the same number of votes, on the basis of which they can enter the second round of elections, the list of these candidates shall be compiled, while voting is repeated and one court can have only one candidate elected.

Three candidates from the list referred to in Article 13 paragraph 2 of this Law shall be elected members of the Judicial Council on condition that one court can have only one candidate elected and one candidate can be elected from the list referred to in Article 13 paragraph 4 and paragraph 5 who received the largest number of votes in the Judicial Conference.

Re-election

Article 15

Judicial Council members elected from among judges and eminent lawyers can be re-elected members of the Judicial Council after four years have elapsed from the day of termination of their previous term of office in the Judicial Council.

Election of Members from among Eminent Lawyers

Article 16

A person with at least ten years of experience in the field of law who has earned personal and professional reputation can be elected to the position of Judicial Council member from among eminent lawyers.

Competent working body of the Parliament of Montenegro shall publish call for election of the Judicial Council member from among eminent lawyers in the Official Gazette of Montenegro and in at least one print media with head office in Montenegro.

Public call for election of the Judicial Council member from among eminent lawyers shall also be published by the competent working body of the Parliament on website of the Parliament of Montenegro (hereinafter referred to as: the Parliament).

Time-limit for application of the candidates shall be 15 days from the day of advertising public call.

The competent working body of the Parliament shall post the list of applied candidates on website of the Parliament and it shall be accessible to the public in the period of at least ten days from the day it has been posted.

The proposal for election of the Judicial Council member from among eminent lawyers shall be submitted to the Parliament by the competent working body of the Parliament.

The proposal for election referred to in paragraph 6 of this Article shall contain as many candidates as are to be elected members of the Judicial Council.

Termination of the Term of Office

Article 17

Term of office of the Judicial Council member shall terminate before expiry of the period he/she was elected for if:

- 1) his/her office on the basis of which he/she was elected to the Judicial Council has terminated;
- 2) he/she is elected to the position of a higher instance judge or position of the president of the court, in the case of the Judicial Council member who was elected from among judges;
- 3) he/she is elected to hold judicial office (of judge or president of the court) in the case of the Judicial Council member who was not elected from among judges;
- 4) he/she resigns;
- 5) he/she is convicted with an unconditional prison sentence.

In the case referred to in paragraph 1 sub-paragraph 1 of this Article, term of office of the Judicial Council member shall terminate on the day of termination of office on the basis of which he/she was elected member to the Judicial Council.

In the cases referred to in paragraph 1 sub-paragraphs 2, 3 and 4 of this Article, term of office of the Judicial Council member shall terminate on the day of rendering decision on election to the position of the judge of a higher instance court or position of president of the court, or election to the judicial office or when the Judicial Council receives his/her written resignation.

In the case referred to in paragraph 1 sub-paragraph 5 of this Article, term of office of the Judicial Council member shall terminate on the day on which his/her conviction becomes final.

The Judicial Council shall note that the term of office of the Judicial Council member has terminated and inform the authority that elected him/her thereof.

Dismissal Article 18

Judicial Council member shall be dismissed if:

- 1) he/she discharges his/her duties unconscientiously and unprofessionally;
- 2) he/she is convicted of an offence which makes him/her unworthy of discharging duties of the Judicial Council member.

Judicial Council member elected from among judges shall also be dismissed if he/she is imposed a disciplinary sanction.

In the cases referred to in paragraph 1 of this Article, motion for dismissal of the Judicial Council member shall be filed by the Judicial Council to the authority that elected the member.

Term of office of the Judicial Council member shall terminate on the day on which the member is dismissed by the authority that elected him/her.

Term of Office in the case of Termination and Dismissal Article 19

In the case of termination of the term of office of the Judicial Council member elected from among judges before expiry of the term of office he/she was elected for, the procedure for proposing candidates shall be repeated in accordance with Articles 13 and 14 of this Law.

In the case of termination of the term of office of the Judicial Council member elected by the Parliament before expiry of the term of office he/she was elected for, the Parliament shall elect a new member.

The term of office of the Judicial Council member elected in accordance with paragraphs 1 and 2 of this Article shall terminate on the day of termination of the term of office of the Judicial Council.

Temporary Removal Article 20

Judicial Council member shall be temporarily removed from office if:

- 1) he/she is detained - for the duration of the detention;
- 2) he/she is temporarily removed from his/her office, i.e. from duties on the basis of which he/she was elected to the Judicial Council;
- 3) indictment against him/her for the offence that makes him/her unworthy of the position in the Judicial Council is confirmed - by the time of final conclusion of the criminal procedure;
- 4) he/she submits motion for his/her resignation - by the time of conclusion of the procedure for resignation.

Judicial Council member elected from among judges can be temporarily removed from office if the procedure for establishing disciplinary liability has been initiated against him/her, by the time of final conclusion of such disciplinary procedure.

The Judicial Council shall render decision on temporary removal from office and deliver it to the Judicial Council member who is temporarily removed from office and to the authority that elected him/her.

Absence from Work and Emoluments Article 21

Judicial Council members who are employed are entitled to the absence from their office in order to discharge duties in the Judicial Council.

During the absence referred to in paragraph 1 of this Article, Judicial Council members whose salaries are earmarked in the budget shall receive salaries and other emoluments based on employment in the state authority in which they are employed.

On the basis of the Judicial Council decision, Judicial Council members elected from among judges can work up to 70% of their annual working hours in the Judicial Council as a result of which the scope of their judicial activities shall be reduced to an appropriate extent. Duties that the Judicial Council members are to perform in the Judicial Council shall be set out in the Judicial Council decision.

Judicial Council members are entitled to emolument for their work in the Judicial Council in the amount established by the Judicial Council.

III ORGANISATION AND MANNER OF OPERATION

Sessions and Voting

Article 22

The Judicial Council shall operate and render its decisions in sessions.

The Judicial Council session can take place if majority of the total number of the Judicial Council members attend the session.

President of the Judicial Council

Article 23

President of the Judicial Council shall convene and chair sessions of the Judicial Council and shall be responsible for efficient and timely operations of the Judicial Council.

Upon proposal by the president of the Judicial Council, the Judicial Council shall appoint one Judicial Council member elected from among eminent lawyers to replace the president in the case of his/her absence or if he/she cannot attend the session, as well as to discharge other duties provided for in the Rules of Procedure of the Judicial Council with a view to ensuring efficient operations.

Commissions

Article 24

The Judicial Council may set up commissions in order to ensure higher efficiency in discharging duties from within its competencies.

President of the Judicial Council can neither chair nor be a member of the commissions referred to in paragraph 1 of this Article.

The manner of operation of the commissions shall be governed by the Rules of Procedure of the Judicial Council.

Members of commissions and members of the Commission for the Code of Judicial Ethics shall be entitled to emolument for their work in the amount established by the Judicial Council amounting up to 50% of the average salary in Montenegro.

Competencies of Judicial Council

Article 25

Besides competencies set out by the Constitution, the Judicial Council shall also:

- 1) resolve complaints of the work of judges;
- 2) decide on disciplinary liability of judges;
- 3) issue its opinion about draft pieces of legislation in the field of judiciary;
- 4) ensure usage, functionality and uniformity of the Judicial Information System in the part related to courts;
- 5) cooperate with the Prosecutorial Council in ensuring training for holders of judicial office;
- 6) keep records which contain data on judges;
- 7) scrutinise complaints filed by judges and take stands related to jeopardising their independence and autonomy;

- 8) propose indicative benchmarks for determining the required number of judges and other civil servants and state employees in courts;
- 9) develop methodology for preparing report on operation of courts and annual allocation of tasks;
- 10) issue identity cards to judges and presidents of courts and keep records on identity cards;
- 11) perform other activities set out by the law.

The procedure for considering complaints against the work of judges shall be conducted in accordance with the Rules of Procedure of the Judicial Council.

Form and manner of issuing identity cards to judges and presidents of courts and manner of keeping records on issued identity cards shall be prescribed by the state administrative body competent for judiciary affairs (hereinafter referred to as: the Ministry of Justice).

Decision on the Number of Judges

Article 26

The number of judicial posts and the number of lay judges in every court shall be established by the Judicial Council upon proposal by the Minister of Justice and on the basis of the initiative submitted by president of the court.

The number of judicial posts shall be determined on the basis of indicative benchmarks set in accordance with the law governing organisation of courts.

If the Minister of Justice does not comply with the initiative of president of the court within 30 days, president of the court shall submit initiative to the Judicial Council.

Decision on the number of judges and lay judges shall be published in the Official Gazette of Montenegro.

Rules of Procedure of the Judicial Council

Article 27

The Judicial Council shall adopt the Rules of Procedure which govern matters prescribed by this Law, as well as the other matters relevant for organisation of work of the Judicial Council.

The Rules of Procedure of the Judicial Council shall be published in the Official Gazette of Montenegro.

Decision

Article 28

Decisions of the Judicial Council shall be final and administrative dispute may be initiated against them, unless otherwise provided for by this Law.

In rendering decision on election of judges and presidents of courts, the Judicial Council shall take into consideration proportionate representation of members of minority nations and other minority ethnic communities, as well as the gender balanced representation.

Annual Report

Article 29

The Judicial Council shall produce its annual report containing data on work of the Judicial Council, description and analysis of conditions in the judiciary, detailed data for every court about the number of received and solved cases in the year the report is produced for, problems and faults in their work, as well as measures to be undertaken to eliminate the identified faults.

The Judicial Council shall submit draft annual report to all the courts in order to obtain their opinions.

Annual report shall be submitted to the Parliament not later than 31 March of the current year for the previous year.

The Parliament shall scrutinise the annual report referred to in paragraph 3 of this Article, whereas president of the Judicial Council shall present annual report in the Parliament.

The report shall be published on website of the Judicial Council.

Relations between Judicial Council and Courts

Article 30

Upon the request of the Judicial Council, the courts shall place all the data and information from within their jurisdiction at disposal of the Judicial Council.

If the court does not comply with the request of the Judicial Council within the set time-limit, it shall promptly present reasons for such non-compliance.

Upon request of the Judicial Council, the courts shall enable the Judicial Council direct insight into official case files, documents and data and shall submit to it the copies of requested files and documents.

Presidents of courts, judges and court employees shall attend sessions of the Judicial Council as requested by the Judicial Council.

IV ELECTION OF JUDGES AND PRESIDENTS OF COURTS

1. Election of the Supreme Court President

Requirements for Election of the Supreme Court President

Article 31

To be elected president of the Supreme Court, a person has to meet general and specific requirements for holding office of the Supreme Court judge and has to be characterised by professional impartiality, high professional and moral qualities.

Election of the Supreme Court President

Article 32

Vacancy for president of the Supreme Court shall be advertised by the Judicial Council in the Official Gazette of Montenegro and one print media with head office in Montenegro.

Provisions of Article 42 of this Law shall apply to the procedure for application of the candidates.

The Judicial Council shall submit the list of applied candidates who meet the requirements for the post of the Supreme Court president set by the law to the General Session of the Supreme Court which shall invite the applied candidates for an interview.

General Session of the Supreme Court shall establish, by secret ballot, proposal for the candidate for the Supreme Court president in accordance with the law which governs organisation of courts.

2. Requirements for Election of Judges and Presidents of Courts

General Requirements

Article 33

To be elected judge or president of the court, a person shall be a citizen of Montenegro who graduated from the faculty of law (higher education with 240 ETCS credits, education level VII1) and passed judicial exam, and who also has work experience as required under this Law.

Specific Requirements for the Judge

Article 34

To be elected judge of the misdemeanour court, a person has to have four years of experience in the field of law, of which at least two years after having passed judicial exam.

To be elected judge of the basic court, a person has to have at least two years of experience, after having passed judicial exam, as an adviser in the court or in the state prosecution office, or as a lawyer, notary, deputy notary or professor of law or at least four years of experience in some other job in the field of law.

To be elected judge of the commercial court, a person has to have at least three years of experience, after having passed judicial exam, as an adviser in the court or in the state prosecution office, or at least three years of experience as a lawyer, notary, deputy notary or professor of law or at least four years of experience in some other job in the field of law.

To be elected judge of the Administrative Court, a person has to have at least ten years of experience, after having passed judicial exam, as an adviser in the court or in the state prosecution office or as a lawyer, notary, deputy notary or professor of law or in some other job in the field of law.

To be elected judge of the High Misdemeanour Court, a person has to have experience of at least six years in holding office of the judge or a misdemeanour judge.

To be elected judge of the high court, a person has to have experience in holding office of the judge for at least eight years.

To be elected judge of the Court of Appeals, a person has to have experience in holding office of the judge for at least ten years.

To be elected judge of the Supreme Court, a person has to have at least 15 years of experience in holding office of the judge.

By way of exception to paragraph 8 of this Article, to be elected judge of the Supreme Court a person has to have at least 20 years of experience as a state prosecutor, lawyer, notary, deputy notary or professor of law or at least 20 years of experience in other jobs in the field of law after having passed judicial exam.

Specific Requirements for Election of President of the Court Article 35

To be elected president of the court, a person shall in addition to meeting general requirements referred to in Article 33 of this Law also have the following work experience:

A total of:

- six years of work experience in jobs in the field of law, of which at least three years as the judge or misdemeanour judge – for president of the basic misdemeanour court;
- ten years in jobs in the field of law, at least five of which in holding office of the judge – for president of the basic court;
- ten years in jobs in the field of law, at least five of which in holding office of the judge – for president of the Commercial Court;
- ten years of work experience in jobs in the field of law, at least five of which in holding office of the judge or misdemeanour judge – for president of the High Misdemeanour Court;
- 12 years in jobs in the field of law, at least eight of which in holding office of the judge – for president of the high court;
- 16 years in jobs in the field of law, at least 10 of which in holding office of the judge – for president of the Administrative Court;
- 16 years in jobs in the field of law, at least 12 of which in holding office of the judge – for president of the Court of Appeals;

The judge or president of the court who has been given the grade good or excellent for his/her performance in the evaluation procedure conducted in accordance with this law may be elected to the position of president of the court.

3. Procedure for Election of President of the Court

Activity Programme Article 36

Together with their application, candidates for the position of president of the court shall also submit the activity programme which sets out vision of the organisation of work in the court during the five-year term of office.

Contents of the activity programme referred to in paragraph 1 of this Article shall be regulated by the Judicial Council.

Criteria for Election of President of the Court

Article 37

Criteria for election of president of the court shall be:

- 1) grade given to the activity programme;
- 2) grade given for his/her performance as the judge or president of the court;
- 3) grade given during the interview with the candidate.

For the activity programme the candidate for president of the court may score up to 40 points, for the grade good given for performance he/she may score 30 points, for the grade excellent 40 points and for the interview up to 20 points.

Election of President of the Court

Article 38

The same person may be elected president of the same court maximum two times.

After expiry of the period for which he/she has been elected, termination of office of president of the court, if he/she has requested so himself/herself, in the event of closing or merging between courts and dismissal from office of president of the court, president of the court shall remain to work in that court as a judge.

Appropriate Application

Article 39

Provisions of this Law governing the procedure for election of judges of basic court shall apply accordingly to the procedure for public advertisement, application of candidates, conducting interviews, compiling the list of candidates and rendering decision on election.

4. Judicial Vacancies Plan

Content and Manner of Adoption

Article 40

Judicial vacancies in courts shall be filled in accordance with the judicial vacancies plan at the level of Montenegro (hereinafter referred to as: judicial vacancies plan).

Judicial vacancies plan shall contain judicial posts in all the courts that will be vacant in the next two years.

Judicial vacancies plan shall be prepared on the basis of assessment of the need for filling vacancies by voluntary transfer, promotion and public advertisement for the first election of judges in misdemeanour courts, basic courts, Commercial Court and Administrative Court, as well as for one post in the Supreme Court referred to in Article 34 paragraph 7 of this Law. Judicial vacancies plan shall be adopted by the Judicial Council at latest by the end of the calendar year for the next two years.

Judicial vacancies plan may be amended if during the year there has been a change in circumstances on the basis of which the assessment of filling judicial posts referred to in paragraph 2 of this law was carried out.

5. Procedure for Election of Judges of the Basic Court

Public Advertisement of Vacancies

Article 41

Judicial vacancies in basic courts shall be filled on the basis of internal advertisement for voluntary transfer of the judge from one basic court to the other.

If a judicial vacancy is not filled in accordance with paragraph 1 of this Article, judges in basic courts shall be elected on the basis of public advertisement.

Public advertisement for filling judicial vacancies in basic courts at the level of Montenegro shall be published by the Judicial Council in the Official Gazette of Montenegro and in one print media with head office in Montenegro.

Application Procedure

Article 42

Applications shall be submitted to the Judicial Council within 15 days from the day of publishing public advertisement for filling judicial posts in basic courts on the form established by the Judicial Council.

The Judicial Council shall reject untimely and incomplete applications.

Applicant may initiate administrative dispute against the Judicial Council's decision on dismissing untimely and incomplete application.

Written Examination

Article 43

The Judicial Council shall administer written examination of persons whose applications are timely and complete through the Commission composed of three members of the Judicial Council, of whom at least two shall be from among judges.

Written examination shall not be administered for the persons referred to in paragraph 1 of this Article if they were given a grade in the judicial exam.

Written test shall be prepared by the Commission referred to in paragraph 1 of this Article and it shall include drawing up decisions in the fields of criminal and civil law.

Written test shall be prepared by using a code.

Grading shall be carried out by assigning a certain number of points to the form of decision, application of law and statement of reasons for rendering such decision, while maximum points to be scored shall amount to 80, with 40 points that may be scored respectively for drawing up decisions in the fields of criminal and civil law.

Written test shall be graded by the Commission referred to in paragraph 1 of this Article and submitted to all members of the Judicial Council.

The manner of administering written examination shall be regulated by the Rules of Procedure of the Judicial Council.

Interview

Article 44

The Judicial Council shall conduct interview with the persons who scored more than 60 points in the written examination, or in the judicial exam.

The following shall be evaluated during the interview:

- motivation to work in the court;
- communicative competence;
- ability to make decisions and resolve conflicts;
- understanding the role of a judge in society.

Evaluation referred to in paragraph 2 of this Article shall be carried out by having each member of the Judicial Council give a certain number of points to each of the interviewees.

Evaluation shall be carried out with a certain number of points, while the maximum number of points that may be scored shall amount to 20.

Final grade given for the interview shall be average number of points calculated on the basis of the number of points given by each Judicial Council member.

A person who has scored less than 15 points on the basis of the grade given for the interview may not be placed on the ranking list for judges.

Ranking List of Candidates for Judges

Article 45

The ranking list of candidates (hereinafter referred to as: the ranking list) shall be compiled on the basis of the grade received in the written examination, or in the judicial exam, and during the interview according to the number of points which may not exceed 100.

If two candidates have the same number of points, advantage on the list shall be given to the candidate who scored more points in the written examination, or in the judicial exam, and if it is not possible to establish advantage of candidates under this criterion advantage shall be given to the candidate who is member of a minority nation or other minority ethnic communities.

If advantage between the candidates cannot be determined in the manner referred to in paragraph 2 of this Article, the Judicial Council shall decide by drawing lots.

Election and Assignment of Candidate for the Judge

Article 46

The Judicial Council shall elect the number of candidates for judges which equals the number of advertised judicial vacancies according to the order from the ranking list and shall render decision on assignment of candidate for the judge after candidate for the judge has chosen the basic court which he/she will be assigned to.

The right to choose the basic court which he/she will be assigned to shall be exercised by candidate for the judge according to the order on the ranking list.

Candidate for the judge who has refused to be assigned as referred to in paragraph 1 of this Article shall lose status of candidate for the judge granted on the basis of the public advertisement he/she has applied for.

In case referred to in paragraph 3 of this Article, a new candidate for the judge shall be elected in accordance with paragraph 1 of this Article.

Rights of Applicants

Article 47

Within 15 days from the day of rendering decision on assigning candidate for the judge, a person who has applied for public advertisement for election of judges in basic courts is entitled to gain insight into the documents, written test and grade of persons that applied for that public advertisement.

Rights and Duties of Candidate for the Judge

Article 48

Candidate for the judge shall be employed in the basic court which he/she has been assigned to for a limited period of time pending decision on his/her election.

Candidate for the judge shall be entitled to a salary in the amount of 70% of the salary earned by judge of the basic court, or of the commercial court.

Regulations governing rights and duties of civil servants shall apply to the rights and duties of candidate for the judge arising from labour and stemming from labour which are not regulated by this Law.

Initial Training

Article 49

Candidates for judges shall complete initial training that consists of theoretical and practical parts and that shall last minimum one year.

Theoretical part of initial training shall be conducted by the Judicial Training Centre, while practical part of initial training shall be conducted in the court which candidate for the judge has been assigned to.

Initial training shall be conducted in accordance with the initial training programme.

Practical part of initial training shall be conducted under supervision of the mentor who shall be assigned in the session of judges of the basic court which candidate for the judge has been assigned to, from among judges who have held judicial office for at least five years.

Grade of candidate for the judge participating in initial training shall be determined by the Judicial Council on the basis of the report on completed training prepared by Judicial Training Centre and the mentor.

Grade can be satisfactory and unsatisfactory and a statement of reasons for it shall be provided.

Initial training programme shall be adopted and initial training shall be delivered and evaluation of candidate carried out in accordance with the law governing education of judicial office holders.

Decision on Election

Article 50

Candidate for the judge who has been given the grade satisfactory in initial training shall be elected by the Judicial Council to the position of the judge of the basic court which he/she has been assigned to.

Candidate for the judge who has been given the grade unsatisfactory in initial training shall have his/her employment terminated by operation of law on the day on which the decision on grade becomes final.

6. Election of Judges of the Misdemeanour Court

Public Advertisement

Article 51

On the basis of the judicial vacancies plan, the Judicial Council shall publicly advertise vacancy for the judge in misdemeanour courts.

Provisions of Articles 41 and 42 of this Law shall apply accordingly to the procedure for public advertisement, applying and considering applications.

Written Examination

Article 52

Written examination shall include drawing up a decision that falls within competence of the misdemeanour court.

Provisions of Articles 43 and 44 of this Law shall apply accordingly to the procedure for administering written examination, conducting interview and evaluation.

Decision on Election of Candidate for the Judge

Article 53

The ranking list shall be compiled on the basis of the grade given in the written examination and in the interview.

If two candidates have the same number of points, advantage on the list shall be given to the candidate who scored more points in the written examination, or in the judicial exam, and if it is not possible to establish advantage of candidates under this criterion advantage shall be given to the candidate who is member of a minority nation or other minority ethnic communities.

If advantage between the candidates cannot be determined in the manner referred to in paragraph 2 of this Article, the Judicial Council shall decide by drawing lots.

Provisions of Article 46 of this Law shall apply accordingly to the procedure for election and assignment.

Candidate for the judge of the misdemeanour court shall have the same rights and duties as candidate for the judge of the basic court.

Initial Training

Article 54

Candidates for judges of the misdemeanour court shall complete initial training which consists of theoretical and practical parts and lasts for at least four months for the misdemeanour court.

Provisions of Article 49 of this Law shall apply accordingly to the programme for and delivery of initial training.

**Decision on Election
Article 55**

The Judicial Council shall elect candidate for the judge who has received the grade satisfactory in the initial training to the misdemeanour court which he/she has been assigned to.

Employment of candidate for the judge who has received the grade unsatisfactory in initial training shall terminate by operation of law on the day on which decision on the grade becomes final.

**7. Election of Judges of Administrative Court and Commercial Court
Public Advertisement
Article 56**

On the basis of the judicial vacancies plan, the Judicial Council shall publicly advertise vacancy for the judge in Administrative Court and in Commercial Court.

Provisions of Articles 41 and 42 of this Law shall apply accordingly to the procedure for public advertisement, applying and considering applications.

**Written Examination
Article 57**

Written examination shall include drawing up a decision that falls within competence of the Administrative Court, i.e. Commercial Court.

Provisions of Articles 43 and 44 of this Law shall apply accordingly to the procedure for administering written examination, conducting interview and evaluation.

**Decision on Election of Candidate for the Judge
Article 58**

The ranking list shall be compiled on the basis of the grade received in the written examination and in the interview.

If two candidates have the same number of points, advantage on the list shall be given to the candidate who scored more points in the written examination, or in the judicial exam, and if it is not possible to establish advantage of candidates under this criterion advantage shall be given to the candidate who is member of a minority nation or other minority ethnic communities.

If advantage between the candidates cannot be determined in the manner referred to in paragraph 2 of this Article, the Judicial Council shall decide by drawing lots.

The Judicial Council shall elect the number of judges which is equal to the number of advertised judicial vacancies and according to the order on the ranking list it shall render decision on the assignment of judges to the Administrative Court, i.e. Commercial Court.

Candidate for the judge of the Administrative Court, i.e. Commercial Court, shall have the same rights and duties as candidate for the judge of the basic court.

**Initial Training
Article 59**

Candidates for judges of the Administrative Court, i.e. Commercial Court shall complete initial training that consists of theoretical and practical parts that shall last minimum three months for the Administrative Court, i.e. six months for the Commercial Court.

Provisions of Article 49 of this Law shall apply accordingly to the programme for and delivery of initial training.

**Decision on Election
Article 60**

Candidate for the judge that has been given the grade satisfactory in initial training shall be elected by the Judicial Council to the position of the judge of the Administrative Court, i.e. Commercial Court.

Employment of the candidate for the judge who has been given the grade unsatisfactory in initial training shall terminate by operation of law on the day on which decision on the grade becomes final.

8. Election of One Judge of the Supreme Court

Public Advertisement

Article 61

On the basis of the judicial vacancies plan, the Judicial Council shall publicly advertise vacancy for the judge in the Supreme Court referred to in Article 34 paragraph 9 of this Law. Provisions of Articles 41 and 42 of this Law shall apply accordingly to the procedure for public advertisement, applying and considering applications.

Decision on Election of the Judge of the Supreme Court

Article 62

The Judicial Council shall conduct interview with candidate for the judge of the Supreme Court.

Article 44 of this Law shall apply accordingly to the procedure for conducting interview and evaluating candidates for the judge of the Supreme Court.

If two candidates have the same number of points, advantage on the list shall be given to the candidate who is member of a minority nation or other minority ethnic communities, whereas if the advantage between the candidates cannot be determined under this criterion either the Judicial Council shall decide by drawing lots.

The Judicial Council shall elect judge of the Supreme Court according to the order on the ranking list.

9. Promotion of Judges

Requirements for Promotion

Article 63

The judge shall be entitled to promotion to a higher instance court if he/she has been given the grade excellent or good for his/her performance in accordance with this Law and if he/she meets special requirements set for the election to that court.

The judge shall be entitled to a promotion to the Supreme Court if he/she has been given the grade excellent and if he/she meets special requirements set by this Law for election to the Supreme Court referred to in Article 34 paragraph 8 of this Law.

Public Advertisement

Article 64

In the promotion procedure, judicial vacancies in high court, high misdemeanour court, Court of Appeals and Supreme Court shall be advertised in accordance with the judicial vacancies plan.

Provisions of Articles 41 and 42 of this Law shall apply accordingly to the procedure for public advertisement, applying and considering applications.

Criteria for the Judge who is Promoted

Article 65

The judge shall be elected to a higher instance court on the basis of the judge's performance and grade given during the interview with the judge who has applied for the vacancy.

On the basis of the grade good given for performance, the judge may score up to 60 points, on the basis of the grade excellent given for performance he/she may score up to 80 points, whereas on the basis of the interview he/she may score up to 20 points.

Provisions of Articles 44 and 45 and Article 57 of this Law shall apply accordingly to the procedure for conducting interview, compiling the ranking list and adopting decision on election on the basis of the promotion.

10. Election of Lay Judges

Requirements for Lay Judges

Article 66

A person who has fulfilled general requirements for working in state bodies, holds a university degree, **has** legal capacity and is at least 30 years of age may be elected to the position of lay judge.

Procedure for the Election of Lay Judges

Article 67

President of the court shall advertise vacancies for lay judges in the court and in one print media.

President of the court shall interview the applied candidates who meet requirements set in Article 66 of this Law and, on the basis of the conducted interview, he/she shall compile the list of candidates that he/she shall submit to the Judicial Council, accompanied by opinion on each candidate given in the judges' session.

The Judicial Council shall elect lay judges on the basis of the list and opinions referred to in paragraph 2 of this Article.

Announcement of the Decision on Election

Article 68

The Judicial Council shall notify the elected candidate and other candidates on the election list, as well as the court to which the lay judge is elected.

Decision on election of the lay judge shall be published in the Official Gazette of Montenegro.

11. Oath and Taking Judicial Office

Article 69

The judge shall take office on the day the oath is taken.

The judge shall take the oath in front of the Judicial Council, at the latest within 15 days from the day of being elected.

The lay judge shall take the oath in front of the president of the Judicial Council or a member of the Judicial Council.

Wording of the Oath

Article 70

Wording of the oath reads as follows: "I do solemnly swear to discharge duties of judicial office in a conscientious, independent, impartial, honest, fair and accountable manner under the Constitution and the law."

The oath shall be taken by reciting it and by signing text of the oath.

If the judge or lay judge does not take or he/she refuses to take the oath it shall be deemed that he/she has not been elected.

The judge who has been elected in the promotion procedure to a higher instance court shall not recite text of the oath referred to in paragraph 1 of this Article, instead he/she shall formally sign wording of the oath.

V REASSIGNMENT AND TRANSFER OF JUDGES

Reassignment to another Court with Consent of the Judge

Article 71

The judge shall discharge duties of judicial office in the court to which he/she has been elected.

The Judicial Council may, with consent of the judge, reassign the judge to another court of the same or lower instance for a period not longer than one year if the timely performance of

duties in the court which the judge is reassigned to is called into question as a result of a judge of that court being recused or prevented from discharging duties of judicial office or due to a massive case backlog that may not be reduced with the existing number of judges or for some other justified reasons.

In the cases referred to in paragraph 2 of this Article, the judge shall earn salary in the court which he/she has been reassigned to.

Costs incurred as a result of reassignment of the judge to another court shall be borne by the court that the judge has been reassigned to in accordance with legislation governing compensation of costs to the civil servants and state employees.

Procedure for Temporary Reassignment to another Court

Article 72

The Judicial Council shall render decision to reassign the judge referred to in Article 71 of this Law temporarily to another court, upon the request of president of the court that the judge is reassigned to.

Prior to rendering decision on the temporary reassignment of the judge referred to in Article 71 of this Law to another court, the Judicial Council shall consult president of the court that has submitted the request, the judge being reassigned temporarily and president of the court in which the judge discharges duties of judicial office.

Reassignment to another Authority

Article 73

The Judicial Council may reassign the judge, with his/her consent, for a period of up to three years, to the Ministry of Justice, Judicial Training Centre or Secretariat of the Judicial Council for the purpose of his/her participating in activities of these authorities aimed towards improving the work of courts and particularly towards introducing international standards into the work of courts.

The reassignment referred to in paragraph 1 of this Article shall be carried out upon proposal by the head of authority that the judge has been reassigned to, after having previously obtained opinion of president of the court in which the judge discharges duties of judicial office and consent of the judge.

During the period spent working in the authority which the judge has been reassigned to, he/she shall not discharge duties of judicial office.

In the case referred to in paragraph 1 of this Article, the judge shall keep judicial salary, while costs incurred as a result of reassignment of the judge shall be borne by the authority which the judge is reassigned to.

Reassignment to another Court without Consent of the Judge

Article 74

In the event of court restructuring which leads to decreasing or dissolving a number of judicial posts, the Judicial Council may transfer or reassign the judge to another court without his/her consent.

Costs incurred as a result of transfer or reassignment of the judge to another court without consent of the judge shall be borne by the court that the judge is transferred or reassigned to, except for the salary which the judge earns in the court from which he/she was transferred or reassigned.

Permanent Voluntary Transfer of Judges

Article 75

The Judicial Council shall advertise judicial vacancies internally on the website.

Judges wishing to be transferred permanently to another court of the same or lower instance are entitled to apply for internally advertised vacancies.

The Judicial Council shall compile the list of transfer candidates according to the work results achieved over the past three years, i.e. grade given in accordance with this Law for performance of the judge.

On the basis of the list of candidates referred to in paragraph 3 of this Article, the Judicial Council shall render decision on transferring the judge to another court, while taking into consideration needs of the court in which the judge discharges duties of judicial office and needs of the court which he/she is transferred to.

VI EVALUATION OF JUDGES

Aim of Evaluation

Article 76

Evaluation of judges, with the exception of judges of the Supreme Court, shall be carried out every three years in order to assess their competence, ethics and training needs and also in the event of promotion to a hierarchically higher court.

Grades given for performance of the judge shall be excellent, good, satisfactory and unsatisfactory.

Evaluation of the judge shall be carried out before expiry of the time-limit referred to in paragraph 1 of this Article, as follows:

- performance evaluation of the judge who has been given the grade unsatisfactory shall be carried out after expiry of the time-limit of one year from the day on which decision on establishing the grade became final.
- performance evaluation of the judge who has applied for advertisement for promotion to a higher instance court, if he/she does not have the grade or if more than two years have elapsed since the previous grade has been established.

Performance evaluation of the judge shall not be carried out if the judge was absent for at least one year in the period for which evaluation referred to in paragraph 1 of this Article is carried out.

Evaluation Committee

Article 77

Evaluation of judges shall be carried out by the Committee for Evaluation of Judges' Performance set up by the Judicial Council (hereinafter referred to as: the Evaluation Committee).

The Evaluation Committee shall be composed of the president of the Supreme Court and four members of the Judicial Council elected from among judges.

Decision on performance evaluation of the judge shall be rendered by the Evaluation Committee on the basis of the proposal put forward by the judicial panel responsible for performance evaluation which is composed of president of the court in which the judge is evaluated and four judges from higher instance courts (hereinafter referred to: judicial panel for evaluation).

Judicial panels for evaluation shall be set up by the Judicial Council.

The Judicial Council may render decision on recusal of the members of the Evaluation Committee and judicial panel for evaluation.

The Rules of Procedure of the Judicial Council shall govern the manner of operation of the Evaluation Committee and of the panel for evaluation.

Evaluation Criteria

Article 78

The criteria for evaluation of performance of the judge shall be:

- expert knowledge;
- general competences for discharging duties of judicial office.

Expert Knowledge of the Judge
Article 73

Expert knowledge of the judge shall be evaluated on the basis of the following sub-criteria:

- quantity and quality of his/her work;
- preparation for trials;
- ability to plan and effectively conduct procedural actions and skills to conduct hearings;
- professional advancement.

Quantity and quality of work shall be evaluated on the basis of the number of pending cases, number of completed cases, number of quashed decisions, number of hearings and sittings initiated by the second instance court, adopted requests for review, adoption of decisions within the time-limit set by the law and quality of the statement of reasons.

The judge shall be given the grade unsatisfactory if the results of his/her work are more than 20% below the average benchmarks set by the Judicial Council for the quantity of work in a specific type of cases depending on the court size, unless the judge has given justified reasons thereof.

Preparation for trials shall be evaluated on the basis of precise identification of the case and evidence to be presented along with their concentration.

Ability to plan and effectively conduct procedural actions shall be evaluated on the basis of ability of the judge to organise and effectively implement procedural and administrative actions by following the principle of efficiency and effectiveness of the procedure, whereas the skill to conduct hearings shall be evaluated on the basis of ability of the judge to manage hearings in a clear and understandable manner while respecting procedural roles of parties in the procedure.

Professional advancement shall be evaluated on the basis of all the activities that the judge undertakes in order to improve and use his/her knowledge and methods in his/her future work.

General Competences
Article 80

General competences for discharging duties of judicial office shall be evaluated on the basis of the following sub-criteria:

- ability to communicate;
- ability to adjust to changing circumstances;
- participation in various professional activities;
- ability to organise and coordinate court employees.

Ability to communicate shall be evaluated on the basis of showing respect for parties, co-workers and court employees while discharging duties of judicial office.

Ability to adjust to the changing circumstances shall be evaluated on the basis of the ability to adjust to the structural and organisational changes in the court in which he/she discharges duties of judicial office and changes in legislative and procedural rules, as well as to the use of new technology and rules of work.

Participation in various professional activities shall be evaluated on the basis of participation of the judge in professional activities and training courses organised in the court or in accordance with the training programmes.

Ability to organise and coordinate court employees shall be evaluated on the basis of ability of the judge to cooperate, organise and control work of advisers, trainees and employees he/she works with.

Sources of Evaluation
Article 81

Performance evaluation of the judge according to the criteria referred to in Article 78 of this Law shall be carried out by gaining insight into:

- five randomly selected cases that were closed with final court decisions,
- five cases of the judge's own choice that were closed with final court decisions,

- five randomly selected cases closed with final court decisions in which court decisions were quashed,
- statistical report on performance of the judge which shall contain data on performance of the judge, data from the records on judges, data on the number of complaints and decisions upon complaints, number of the requests for review in the judge's cases and decisions upon requests for review and number of cases in which court decision was not drawn up within the time-limit set by the law;
- records obtained in the process of controlling the work of the court, and
- report of the Judicial Training Centre on training courses completed by the judge.

Rules for Case Selection

Article 82

Cases referred to in Article 81 paragraph 1 indents 1, 2 and 3 of this Law that are subject to evaluation shall be selected among cases closed with final court decisions during the evaluation period and which the judge adjudicated as a single judge, judge rapporteur or chairman of the panel, whereas in addition to the cases adjudicated by the judge in the court in which he/she performs duties of judicial office, the cases which he/she adjudicated in the courts he/she was reassigned to in accordance with the law shall also be taken into consideration.

Cases shall be selected after evaluation of the judge has begun, whereas judge's presence shall be mandatory.

The manner of random selection of cases shall be regulated in more detail by the Rules of Procedure of the Judicial Council.

Report of the Judge

Article 83

The judge whose performance is evaluated shall prepare report on the standardised form which shall contain description of his/her judicial activities on the basis of criteria and sub-criteria laid down by this Law and general grade given for his/her performance, while he/she shall also indicate cases that the judge has selected himself/herself to be subject to evaluation.

The report referred to in paragraph 1 of this Article shall be submitted by the judge to the president of the court in which he/she discharges duties of judicial office within eight days from the day of the beginning of the evaluation.

President of the court in which the judge discharges duties of judicial office shall submit the report referred to in paragraph 1 of this Article and documents required for evaluation of the judge referred to in Article 81 of this Law to the judicial panel for evaluation within five days from receiving the report from the judge.

Report and Proposal by the Evaluation Panel

Article 84

Within 30 days from the day of submitting documents referred to in Article 81 of this Law, the judicial panel for evaluation shall produce report on evaluation of the judge on the basis of criteria and sub-criteria laid down by this Law.

On the basis of the report referred to in paragraph 1 of this Article and report of the judge referred to in Article 82 of this Law, the judicial panel for evaluation shall produce a draft grade for the judge subject to evaluation and send it to the Evaluation Committee.

Statement concerning Draft Grade

Article 85

The Evaluation Committee shall submit draft grade referred to in Article 84 of this Law to the judge whose work is subject to evaluation and who shall be entitled to make a statement thereto within five days from the day of submitting the draft grade.

The Evaluation Committee may request additional data and explanations from the evaluation panel.

The Evaluation Committee may invite the judge for an interview before it establishes final grade in order to clarify certain matters.

Establishing the Grade

Article 86

The judge shall be given the grade excellent if his/her performance has been evaluated as excellent according to all the sub-criteria, or as good according to two sub-criteria and excellent according to the remaining ones.

The judge shall be given the grade good if according to at least five sub-criteria his/her performance has been evaluated with the grade good.

The judge shall be given the grade satisfactory if according to at least four sub-criteria his/her performance has been evaluated with the grade satisfactory.

The judge shall be given the grade unsatisfactory if he/she has been given the grade unsatisfactory according to at least two sub-criteria.

Grade

Article 87

Decision of the Evaluation Committee shall be final and administrative dispute may be initiated against it.

Final decision on the grade given to the judge shall be registered in the records on judges.

Consequences of the Grade

Article 88

The judge who has been given the grade satisfactory and grade unsatisfactory shall be referred to the mandatory continuous training in accordance with the law governing the training of judicial office holders.

The judge who has received the grade excellent or good may be promoted to a higher instance court.

If the judge who has been given the grade excellent is not promoted to a higher instance court within one year from the day on which he/she has been given the grade excellent, he/she shall be entitled to the salary which equals amount of salary of president of the court in which he/she performs duties of judicial office.

Evaluation of the Presidents of Courts

Article 89

Evaluation of presidents of the courts shall be carried out by the Evaluation Committee.

Evaluation of presidents of the courts shall be carried out for presidents of misdemeanour court on the basis of the grade proposed by president of the High Misdemeanour Court, for presidents of basic courts on the basis of the proposal put forward by president of the high court from the area in which that court is located, for presidents of the Commercial Court and high courts on the basis of the proposal put forward by president of the Court of Appeals and for presidents of the Administrative Court and Court of Appeals on the basis of the proposal put forward by president of the Supreme Court.

Evaluation of president of the court shall be carried out two years after his/her being elected to the position of president of the court and after expiry of the five-year term of office, and then after five years if he/she is re-elected to the position of president of the court.

President of the court may be given grades good and unsatisfactory.

If president of the court is given the grade unsatisfactory, he/she shall be dismissed from office of president of the court.

Procedure for evaluation of presidents of the courts in capacity of judges shall be carried out in the procedure and in the manner prescribed under this Law evaluation of judges.

Special Rules for Evaluation

Article 90

In accordance with this Law, the Judicial Council shall govern in more detail and in special rules the evaluation procedure and indicators for assessing criteria for the evaluation of judges, as well as the criteria and indicators for evaluation of presidents of the courts.

VII INCOMPATIBILITY, IMMUNITY AND TERMINATION OF OFFICE

Opinion on other Activities

Article 91

Upon request of the president of the court or the judge, the Judicial Council shall give opinion about whether certain activities are incompatible with discharging duties of judicial office.

Deciding on Immunity

Article 92

When the court of appropriate jurisdiction has established that there are reasons to place the judge in detention due to a criminal offence committed while discharging duties of judicial office, it shall without delay request from the Judicial Council to decide whether it approves of such detention.

The decision referred to in paragraph 1 of this Article shall be rendered by the Judicial Council within 24 hours from receiving the request.

Liability for Damage

Article 93

The state shall be liable for any damage caused to a party in the procedure by the judge as a result of his/her unlawfully or unprofessionally or unconscientiously performed work while discharging duties of judicial office.

The state is entitled to request from the judge the compensation of the amount it has paid out to the party in the procedure for the damage referred to in paragraph 1 of this Article if the judge caused the damage intentionally.

If the judge caused the damage referred to in paragraph 1 of this Article by gross negligence, the state is entitled to request compensation of damage it has awarded to the party in the procedure in the amount of maximum one third of the annual net income of the judge.

Termination of Judicial Office

Article 94

In the event of occurrence of any of the reasons for termination of judicial office, the Judicial Council shall be notified thereof without delay by president of the court for the judge, by president of an immediately higher court for president of the court and by General Session of the Supreme Court for president of the Supreme Court.

Decision on termination of office of the president of the Supreme Court, president of the court or judge shall be rendered by the Judicial Council not later than 30 days from receiving the notification.

Office of the person referred to in paragraph 2 of this Article shall terminate on the day the Judicial Council renders its decision, except if termination of office is result of expiry of the term of office in which case the office shall terminate on the day the term of office expires.

Decision on termination of the term of office shall be submitted by the Judicial Council to the person whose term of office has terminated and to the court in which that person discharged duties of judicial office and it shall be published in the Official Gazette of Montenegro.

Termination of the Term of Office of President of the Court
Article 95

Term of office of president of the court shall terminate:

- upon expiry of the period for which he/she was elected,
- upon termination of his/her judicial term of office,
- when so requested by him/her in the case of dissolving or merging the courts.

Proclaiming the Decision on Election to the Judicial Office Null and Void
Article 96

The Judicial Council shall proclaim the decision on election of the judge null and void if it proves that, at the time of election, the judge did not meet election requirements or if it receives information that would, had it been known at the time of election by the Judicial Council, have given the Judicial Council reason not to render decision on election.

The Judicial Council may delay commencement of the discharging of duties of judicial office in order to verify the information referred to in paragraph 1 of this Article.

If the Judicial Council proclaims the decision on election null and void, the second ranking candidate on the list shall be elected or, if there are no more candidates, the election procedure shall be repeated.

VIII DISCIPLINARY LIABILITY AND DISMISAL

1. Disciplinary Procedure

Disciplinary Offences
Article 97

The judge and president of the court in capacity of the judge shall be liable to disciplinary action for committing minor, severe and the most severe disciplinary offences.

The judge shall be considered to have committed **minor disciplinary offence** if:

- 1) he/she unjustifiably fails to take up cases in the order they were received according to the Law and the Rules of Procedure of the court;
- 2) he/she unjustifiably fails to appear or is late for court sittings, hearings or sessions of the panel;
- 3) he/she unjustifiably fails to attend mandatory training programmes;
- 4) he/she fails to fulfil obligations of a mentor during initial training and training of trainees;
- 5) he/she does not take measures laid down by the law relating to the respect for the court and participants in procedure;

The judge shall be considered to have committed **severe disciplinary offence** if:

- 1) he/she unjustifiably fails to schedule court sittings or hearings for cases assigned to him/her or causes delays in procedure in any other manner;
- 2) he/she unjustifiably causes delays in proceedings or fails to take up cases causing the statute of limitation for the criminal prosecution or enforcement of criminal sanctions for criminal offences punishable by the minimum imprisonment of one year;
- 3) he/she unjustifiably fails to draw up decisions in three cases within the time-limit set by the law multiplied by three times;
- 4) he/she fails to recuse himself/herself in the cases in which there is a reason for his/her recusal;
- 5) he/she unjustifiably fails to comply with the programme for reducing case backlog or fails to act in line with the decision on the request for review;
- 6) he/she renders impossible the supervision that is required under the law;
- 7) while discharging duties of judicial office or while in a public place, he/she brings himself/herself into a condition or behaves in a manner which is inappropriate for judicial office;

- 8) he/she treats participants in judicial proceedings and court employees in inappropriate manner;
- 9) he/she discloses information he/she has learnt while adjudicating cases or while discharging duties of judicial office;
- 10) he/she uses judicial office to act in his/her private interests and interests of his/her family and persons close to him/her;
- 11) he/she accepts gifts or fails to disclose data on property and income in accordance with the legislation governing prevention of the conflict of interest;
- 12) he/she is unjustifiably absent from work for five consecutive days;
- 13) he/she discloses confidential information on the case that he/she learnt while discharging duties of judicial office and publicly discloses opinion on the case which did not reach its final judgment stage;
- 14) he/she repeatedly commits minor disciplinary offences.

The judge shall be considered to have committed **the most serious disciplinary offence** if:

- 1) he/she has been convicted of an offence which makes him/her unworthy of discharging duties of judicial office;
 - 2) he/she discharges duties of judicial office unconscientiously or unprofessionally.
- It shall be deemed that the judge discharges duties of judicial office unprofessionally or unconscientiously if:
- 1) he/she unjustifiably fails to achieve at least 50% of the results in terms of quantity of the work done which is measured against average quantity benchmarks set by the Judicial Council for a specific type of cases;
 - 2) in contravention of the Constitution, he/she starts holding office of the member of parliament or any other public office or becomes professionally engaged in some other activities;
 - 3) he/she received the grade unsatisfactory twice in a row;
 - 4) he/she was imposed disciplinary sanction two times for committing severe disciplinary offences.

Disciplinary Sanctions

Article 98

Disciplinary sanctions shall be reprimand, fine, prohibition of promotion and dismissal. Reprimand and fine in the amount of 20% of the judge's salary for a period of three months shall be imposed for committing minor disciplinary offences. Fine in the amount ranging from 20% to 40% of the judge's salary for a period of three to six months and prohibition of promotion shall be imposed for severe disciplinary offences. Dismissal shall be imposed for committing the most severe criminal offences. Prohibition of promotion means that the judge may not be appointed to a higher instance court before two years have elapsed from the day on which the decision on imposing disciplinary sanction against him/her became final.

Motion for Establishing Disciplinary Liability

Article 99

If there is reasonable doubt that the judge has committed a disciplinary offence, the motion for establishing disciplinary liability of the judge may be filed by president of the court, president of an immediately higher court and president of the Supreme Court, minister of justice or Commission for Monitoring Compliance with the Code of Judicial Ethics. Motion for establishing disciplinary liability of president of the Supreme Court may be filed by the General Session of the Supreme Court, minister of justice or Commission for Monitoring Compliance with the Code of Judicial Ethics. In the cases referred to in paragraphs 1 and 2 of this Article, president of the court, president of an immediately higher court, president of the Supreme Court and minister of justice may address the Commission for Monitoring Compliance with the Code of Judicial Ethics with a

request for opinion on whether a particular conduct of the judge is in compliance with the Code of Judicial Ethics.

Motion for establishing disciplinary liability of the judge shall be filed without delay immediately upon learning of commission of a disciplinary offence.

Content of the Motion

Article 100

Motion for establishing disciplinary liability shall be filed with the Judicial Council in writing and it shall contain personal data on the judge, factual and legal description of the disciplinary offence, proposed disciplinary sanction to be imposed and statement of reasons on which reasonable doubt of the judge having committed the disciplinary offence is based.

The Judicial Council shall submit motion for establishing disciplinary liability to the disciplinary plaintiff at the latest within five days from the receipt thereof.

Disciplinary Plaintiff

Article 101

Investigation upon the filed motion for establishing disciplinary liability shall be conducted by the disciplinary plaintiff who shall also represent indictment in the procedure for establishing disciplinary liability of the judge.

Disciplinary plaintiff shall be elected by the Judicial Council for a two-year period from among judges of the Supreme Court after it has previously obtained opinion of the General Session of the Supreme Court.

Finalisation of Disciplinary Plaintiff's Investigation

Article 102

The disciplinary plaintiff shall complete investigation referred to in Article 101 of this Law within three months from the day of submitting motion for establishing liability.

The disciplinary plaintiff shall be bound by factual description of the disciplinary offence contained in the motion for establishing disciplinary liability.

After conducting investigation upon the filed motion, the disciplinary plaintiff may propose the following to the disciplinary panel, i.e. to the Judicial Council:

- 1) to dismiss motion for establishing disciplinary liability because:
 - it has been filed for an action which is not prescribed as a disciplinary offence,
 - statute of limitations began to run,
 - or it has been filed by an unauthorised person.
- 2) to reject motion for establishing disciplinary liability as unfounded due to the lack of evidence that the judge has committed a disciplinary offence;
- 3) to file bill of indictment for establishing disciplinary liability of the judge.

If the disciplinary panel, i.e. Judicial Council do not agree with the motion referred to in paragraph 1 sub-paragraphs 1 and 2 of this Article they may impose an obligation on the disciplinary plaintiff to conduct investigation and bring an indictment.

Authorities Competent to Establish Disciplinary Liability

Article 103

The procedure for establishing disciplinary liability for minor and severe disciplinary offences shall be conducted by the disciplinary panel upon the bill of indictment filed by disciplinary plaintiff.

The disciplinary panel shall be composed of three members, two from among judges who are Judicial Council members and one from among reputable lawyers who are Judicial Council members.

Members of the disciplinary panel and their deputies shall be appointed by the Judicial Council upon proposal by the chairman of the Judicial Council.

**Defence Counsel
Article 104**

The judge whose liability is investigated is entitled to a defence counsel.

In the course of hearing, the judge shall be afforded the opportunity to present his/her defence in person, in writing or through representation by defence counsel of his/her own choice.

**Hearing
Article 105**

In the procedure for establishing disciplinary liability, the disciplinary panel, i.e. Judicial Council shall hold a hearing.

The disciplinary plaintiff, judge and his/her defence counsel shall be summoned to the hearing.

The disciplinary panel, i.e. Judicial Council shall present evidence it deems necessary for accurate and complete establishment of the facts.

If, despite being summoned by the disciplinary panel i.e. Judicial Council the judge whose disciplinary liability is investigated fails to appear, the procedure shall be conducted in his/her absence.

**Decision
Article 106**

In the procedure for establishing disciplinary liability of the judge, the disciplinary panel, i.e. the Judicial Council may decide to:

- 1) reject the bill of indictment as ill-founded;
- 2) adopt the bill of indictment and impose a disciplinary sanction.

When rendering its decision on disciplinary liability and imposing a disciplinary sanction the disciplinary panel, i.e. the Judicial Council shall not be bound by motion of the disciplinary plaintiff.

**Time-limit for Drawing up the Decision
Article 107**

Decision on establishing disciplinary liability of the judge and imposing a disciplinary sanction shall be drawn up and delivered to the judge whose liability is being established and to the disciplinary plaintiff within 15 days from the day on which the decision has been rendered.

The disciplinary plaintiff and the judge whose liability is being established shall be entitled to lodge an appeal against the decision referred to in paragraph 1 of this Article to the panel composed of three judges of the Supreme Court.

**Statute of Limitations
Article 108**

Statute of limitations for the procedure for establishing disciplinary liability of the judge shall begin to run one year from the day on which minor disciplinary offence has been committed, and two years from the day on which severe disciplinary offence has been committed and three years from the day the most severe disciplinary offence has been committed.

By way of exception to paragraph 1 of this Article, statute of limitations for conducting the procedure for establishing disciplinary liability in the case of conviction for a criminal offence which made the judge unworthy of judicial office shall begin to run from the day on which the conviction against the judge becomes final.

Statute of limitations for enforcement of the disciplinary sanction shall begin to run one year from the day on which the decision on imposing disciplinary sanction becomes final.

Statute of limitations for conducting the procedure for establishing disciplinary liability in the case of final conviction for a criminal offence shall begin to run on the day on which the conviction becomes final.

The imposed disciplinary sanctions shall be deleted from records kept on the judge after four years have elapsed from the day on which the disciplinary sanction became final.

The Judicial Council shall delete *ex officio* the data on imposed disciplinary sanctions after expiry of the time-limit set under paragraph 5 of this Article.

Recusal Article 109

When deciding on liability of the judge, disciplinary panel i.e. Judicial Council may not include members in relation to whom there are circumstances that provoke suspicion of their impartiality.

President of the Judicial Council shall decide on recusal referred to in paragraph 1 of this Article, while the Judicial Council shall decide on recusal of the president.

Appropriate Application of Law Article 110

Provisions of the Criminal Procedure Code shall apply accordingly to the disciplinary procedure, unless otherwise provided for by this Law.

Fees shall not be paid in disciplinary procedure, while costs of the procedure shall be borne by the court in which the judge discharges duties of judicial office.

Temporary Removal Article 111

Decision on temporary removal from office shall be rendered by the Judicial Council.

The judge shall be temporarily removed from his/her office if:

- 1) he/she is imposed detention, for the duration of such detention; or
- 2) criminal procedure for a criminal offence that makes him/her unworthy of holding judicial office is initiated against him/her.

The judge can be temporarily removed from office after the motion for initiating disciplinary procedure regarding the most severe disciplinary offence has been filed.

Request for temporary removal from office referred to in paragraphs 2 and 3 of this Article shall be filed by the disciplinary plaintiff.

Effect of the Decision Article 112

Activities undertaken by the judge in trials related to legal matters after he/she has been removed, dismissed or after his/her judicial office has terminated shall have no legal effect.

Disciplinary Liability of Lay Judge Article 113

Provisions of this Law governing disciplinary liability of judges shall apply accordingly to disciplinary liability and procedure for establishing disciplinary liability of the lay judge.

1. Dismissal of President of the Court

Reasons for Dismissal Article 114

President of the court shall be dismissed from office of president of the court if:

- 1) he/she changes annual allocation of tasks in the court in contravention of the law;
- 2) he/she renders impossible the supervision in court that is required under the law;
- 3) he/she treats parties and court employees in inappropriate manner;
- 4) he/she fails to deliver or delivers incomplete and inaccurate activity reports and other data required under the law;
- 5) he/she fails to act upon complaints and requests for review;
- 6) he/she fails to observe the principle of random case assignment;

- 7) he/she withdraws randomly assigned cases in contravention of the law;
- 8) in the procedure for carrying out supervision of performance of the court management duties, unlawfulness and irregularities are identified in performance of the court management duties which are harmful to the regular and timely discharge of duties and functions of the court;
- 9) he/she fails to file motion for establishing disciplinary liability and dismissal of the judge in the cases prescribed by this Law, although he/she is aware or should have been aware of the reasons for disciplinary liability and dismissal;
- 10) he/she is temporarily removed from judicial office; or
- 11) he/she has been given the grade unsatisfactory.

Motion for Dismissal

Article 115

Motion for dismissal of president of the court may be filed by president of an immediately higher court, president of the Supreme Court, minister of justice or Commission for Monitoring Compliance with the Code of Judicial Ethics.

Motion for dismissal of president of the court shall be filed without delay immediately upon learning of commission of a disciplinary offence.

Appropriate Application

Article 116

Provisions of this Law governing the procedure for establishing disciplinary liability of the judge shall apply accordingly to the procedure for dismissal of president of the court.

2. Dismissal due to Permanent Loss of Capacity to Discharge Duties of Judicial Office

Procedure and Decision-making

Article 117

Motion for dismissal in the event of permanent loss of the capacity to discharge duties of judicial office shall be filed on the basis of final court decision on annulment of legal capacity or decision of the competent body establishing that physical and mental capacities are such that they render discharge of duties of judicial office impossible.

If the judge's behaviour or his/her attitude towards work raises suspicion of him/her having permanently lost legal capacity to discharge duties of judicial office, the Judicial Council may, on its own or upon proposal by president of the court, order that the judge be subject to medical examination.

Motion for dismissal of the judge due to permanent loss of legal capacity shall be filed for the judge by president of the court, for president of the court it shall be filed by president of an immediately higher court and president of the Supreme Court, whereas for president of the Supreme Court it shall be filed by General Session of the Supreme Court.

In the procedure for dismissal due to permanent loss of capacity to discharge duties of judicial office, the judge is entitled to make a statement concerning the motion for dismissal.

Decision on dismissal due to permanent loss of capacity to discharge duties of judicial office shall be rendered by the Judicial Council and administrative dispute may be initiated against such decision.

IX RECORDS

Contents of the Records

Article 118

The Secretariat of the Judicial Council shall keep records with the data on judges which shall in particular contain the following data:

- 1) personal name, ethnic background if the judge has declared himself/herself, address, and sex;
- 2) date of election to the judicial office;
- 3) work experience;
- 4) academic title (master, LLM, PhD);
- 5) specialisations and training courses;
- 6) foreign language skills;
- 7) published research and expert papers and other professional activities;
- 8) disciplinary liability and dismissal;
- 9) grade given for the performance;
- 10) termination of office;
- 12) permission to access secret data.

The judge is entitled to propose that other data be entered into the records referred to in paragraph 1 of this Article, along with the right to gain insight into the records and documents that serve as basis for keeping the records on him/her.

The manner of keeping the records referred to in paragraph 1 of this Article shall be laid down by the Rules of Procedure of the Judicial Council.

X- FUNDING

Funds for Operations of the Judicial Council

Article 119

Funds for operations of the Judicial Council shall be allocated in a separate item of the budget of Montenegro.

The Judicial Council shall propose item of the annual budget for operations of the Judicial Council.

The Judicial Council shall submit proposal for its annual budget to the Government.

President of the Judicial Council shall be entitled to participate in work of the Parliament session in which proposal for the budget of the Judicial Council is debated.

Issuing Orders for Disbursement of Funds

Article 120

President of the Judicial Council shall issue orders for disbursement of funds allocated to the Judicial Council.

The authorisation referred to in paragraph 1 of this Article may be delegated to the director of the Secretariat of the Judicial Council.

XI SECRETARIAT OF THE JUDICIAL COUNCIL

Secretariat

Article 121

The Secretariat of the Judicial Council (hereinafter referred to as: the Secretariat) shall be set up for the purpose of ensuring professional performance of technical, financial, administrative, IT, analytical and other tasks of the Judicial Council and tasks of common interest for the courts.

Director of the Secretariat

Article 122

The Secretariat shall be managed by the director.

Director of the Secretariat shall be appointed and dismissed by the Judicial Council, upon proposal by the president of the Judicial Council and on the basis of a public advertisement.

Director of the Secretariat shall be appointed for a five-year term.

Proposal for appointment of the director of the Secretariat shall contain: name of the candidate, short curriculum vitae and statement of reasons.

The person to be appointed director of the Secretariat shall in addition to meeting general requirements for employment in state authorities also meet the following specific requirements:

- 1) to hold Bachelor of Laws degree,
- 2) to have passed judicial exam,
- 3) to have at least ten years of work experience,
- 4) to possess organisational skills.

Deputy Director

Article 123

Director of the Secretariat shall have a deputy to assist him/her in his/her work and to replace him/her in the case of his/her absence.

Deputy director shall be appointed and dismissed by the Judicial Council upon proposal by director of the Secretariat and on the basis of a public advertisement.

Deputy director shall be appointed for a five-year term.

Accountability

Article 124

Director of the Secretariat and deputy director shall report to the Judicial Council.

Term of office of the director of the Secretariat and of the deputy director of the Secretariat shall terminate before expiry of the period for which they are appointed if they resign or if they are dismissed.

Director of the Secretariat and deputy director of the Secretariat can be dismissed upon a reasoned proposal for the president or member of the Judicial Council.

Rights and Duties

Article 125

Director of the Secretariat and deputy director of the Secretariat shall be entitled to a salary in the amount that is set for the Secretary General of the Parliament and his/her deputy.

Director of the Secretariat and deputy director of the Secretariat shall exercise other rights stemming from their employment and in accordance with the legislation governing these matters for the persons referred to in paragraph 1 of this Article.

Legislation that is applied to civil servants and state employees shall apply accordingly to other employees of the Secretariat.

Rulebook on Internal Organisation of the Secretariat**Article 126**

Tasks and duties of the Secretariat, its internal organisation, number of civil servants and state employees and other matters shall be regulated in the rulebook on internal organisation and job description in accordance with this Law and legislation governing on public administration.

The rulebook referred to in paragraph 1 of this Article shall be adopted by the Judicial Council upon the proposal by the director of the Secretariat.

XII TRANSITIONAL AND FINAL PROVISIONS**Article 127**

Implementation of Articles 1 through 32, Articles 71 through 75 and Articles 91 through 126 of this Law shall start as on the day on which this Law enters into force.

Article 128

Implementation of Articles 33 through 70 and Articles 76 through 90 of this Law shall start on 01 January 2016.

Article 129

On the day on which this Law enters into force, Articles 1 through 27 and Articles 42 through 87 of the Law on Judicial Council (Official Gazette of MNE 13/08, 39/11, 46/11 and 51/13) shall be repealed.

Article 130

On the day of beginning of implementation of Articles 33 through 70 and Articles 76 through 90 of this Law, Articles 28 through 41a of the Law on Judicial Council (Official Gazette of MNE 13/08, 39/11, 46/11 and 51/13) and Articles 31 and 32 of the Law on Courts (Official Gazette of MNE 5/02, 49/04 and Official Gazette of MNE 22/08, 39/11 and 46/2013) shall be repealed.

Article 131

This Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of Montenegro.

Alternative for Articles 127 through 131**Article 127**

The Law on Judicial Council (Official Gazette of MNE 13/08, 39/11, 46/11 and 51/13) shall be repealed on the day of the beginning of implementation of this Law.

Article 128

This Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of Montenegro and its implementation shall start on 01 January 2016.